

§ 1424.9

7 CFR Ch. XIV (1–1–07 Edition)

§1424.7, shall be converted to net payable units for producers whose annual bioenergy production is:

(i) Less than 65 million gallons, by dividing by 2.5;

(ii) Equal to or more than 65 million gallons, by dividing by 3.5;

(2) Net payable units calculated under paragraph (d)(1) of this section shall then be converted to a gross payment by multiplying net payable units by the per-unit value of the commodity as of the 10th business day before the start of the production quarter, determined as follows:

(i) For ethanol:

(A) For those agricultural commodities with an established Posted County Price, CCC will use the Posted County Price that CCC announces daily for the county in which the plant is located and applicable quality factors as CCC may establish.

(B) For agricultural commodities that CCC determines do not have Posted County Prices, CCC will use market data CCC determines to be appropriate for the applicable commodity.

(ii) For biodiesel made from:

(A) Soybeans or soy oil, CCC will use the Posted County Price for soybeans for the county where the plant is located.

(B) Eligible commodities other than soybeans or soy oil that have a corresponding oil or grease market price, CCC will first use the soybeans Posted County Price for Macon County, Illinois. Then, the applicable feedstock's oil or yellow grease (for animal fats and oils) market price, as determined by CCC, will be divided by the soy oil price published in the Agricultural Marketing Service's weekly "Soybean Crush Report" (Central Illinois (Decatur, Macon County, Illinois)) for the applicable date. The resulting percentage will be multiplied by the soybean gross payment to determine the producer's gross payment.

(C) Eligible commodities that do not have a corresponding oil or grease market price, in a manner as determined by CCC.

(3) The gross payment calculated under paragraph (d)(2) of this section shall be reduced to a net payment by multiplying the gross payment figure

by the proration factor determined under paragraph (c) of this section.

(4) Subject to other provisions of this section, producers shall be paid the net current payment, if positive, determined for the quarter, subject to the requirements and refund provisions of this part.

(5) After the first quarter, adjustments shall be made based on changes in production. Refunds, when due, shall be due at the per unit values at which they were paid.

(6) For an FY, no producer may receive more than 5 percent of the available funding for this program.

(e) When the commodity's conversion factor has been established, that factor will, as practicable, be posted on the program's website.

(1) If the commodity's conversion factor is not determined when the sign-up is announced, the conversion factor will be provided in a letter to producers with accepted agreements to the extent practicable.

(2) After FY 2003, changes to established conversion factors shall be announced in a press release issued by CCC 90 calendar days before the applicable FY's sign-up, to the extent practicable.

§ 1424.9 Reports required.

Once an eligible producer has submitted a payment application, that producer shall file cumulative and per-plant information for each relevant bioenergy producing facility quarterly through the end of the applicable FY as specified by CCC or as otherwise needed to establish compliance with this part.

§ 1424.10 Succession and control of facilities and production.

A person who obtains a facility that is under contract under this part may request permission to succeed to the program agreement and CCC may grant such request if it is determined that permitting such succession would serve the purposes of the program. If appropriate, CCC may require the consent of the original party to such succession. Also, CCC may terminate a contract and demand full refund of payments

made if a contracting party loses control of a facility whose increased production is the basis of a program payment or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

§ 1424.11 Maintenance and inspection of records.

For the purpose of verifying compliance with the requirements of this part, each eligible producer shall make available at one place at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the program that is within the control of such entity for not less than three years from the payment date.

§ 1424.12 Appeals.

(a) A participant subject to an adverse determination under this part may appeal by submitting a written request to: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, D.C. 20250-0550. The appeal must be delivered in writing to the Deputy Administrator or postmarked within 30 days after the date the Agency decision is mailed or otherwise provided to the participant. The Deputy Administrator may consider a late appeal if determined warranted by the circumstances.

(b) The regulations at 7 CFR part 11 apply to decisions made under this part.

(c) Producers who believe they have been adversely affected by a determination by the Agency must seek review with the Deputy Administrator before any other review may be requested within the Agency.

§ 1424.13 Misrepresentation and scheme or device.

(a) A producer shall be ineligible to receive payments under this program if CCC determines the producer:

- (1) Adopted any scheme or device that tends to defeat the purpose of the program in this part;
- (2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of the bioenergy producer's actions, shall be refunded with interest together with such other sums as may become due, plus damages as may be determined by CCC.

(c) Any producer or person engaged in an act prohibited by this section and any producer or person receiving payment under this part shall be jointly and severally liable for any refund due under this part and for related charges.

(d) The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies that may apply.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions and rates prescribed in part 1403 of this chapter.

§ 1424.14 Offsets, assignments, interest and waivers.

(a) Any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the bioenergy, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found in part 1403 of this chapter shall be applicable to agreement payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this chapter.

(c) Interest charged by CCC under this part shall be at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such funds available. Such interest shall accrue from the date such payments were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations.

(d) CCC may waive the accrual of interest and/or damages if CCC determines that the cause of the erroneous determination was not due to any action of the bioenergy producer.